SUPREME COURT PENDING CASE

The following appeal is assigned for argument in the Supreme Court on September 19, 2017.

STATE *v.* JOHN PANEK, SC 19772
Judicial District of Stamford-Norwalk

Criminal; Whether Appellate Court Properly Construed "Not in Plain View" Element of Video Voyeurism Statute, General Statutes § 53a-189a. The defendant was charged in three cases with video voyeurism in violation of General Statutes § 53a-189a for allegedly surreptitiously videotaping his sexual encounters with three women in private places without their knowledge or consent. General Statutes § 53a-189a provides that a person is guilty of video voyeurism when, "with malice, such person knowingly photographs, films, videotapes or otherwise records the image of another person . . . without the knowledge and consent of such other person . . . while such person is not in plain view, and under circumstances where such other person has a reasonable expectation of privacy." The trial court granted the defendant's motion to dismiss the charges on the ground that the facts alleged by the state did not establish the statute's "not in plain view" element because the complainants were all in the defendant's immediate physical presence at the time the recordings were made and therefore were in "plain view" of the defendant. The state appealed, claiming that the "not in plain view" element should be interpreted to mean that the complainants were not in plain view of *the public* when their images were recorded, or should be evaluated from the perspective of the camera or other device that the defendant used to record the complainants' images. The Appellate Court (166 Conn. App. 613) disagreed and affirmed the judgment dismissing the charges, holding that under the plain and unambiguous language of the statute, the perspective from which the disputed element must be evaluated is that of the defendant, not that of the general public. The Appellate Court also noted that its interpretation of the statute is consistent with the settled meaning of the phrase "in plain view" under federal law involving the plain view exception to the warrant requirement under the fourth and fourteenth amendments. Finally, the Appellate Court noted that the legislature used similar language in General Statutes § 53a-182 (a) (7), which makes Peeping Tom behavior punishable, thereby signaling a legislative intent that, under both statutes, the perspective from which it must be determined if the complainant was "in plain view" at the time the defendant engaged in such behavior is that of the defendant as the alleged voyeur. The state appeals, and

the Supreme Court will decide whether the Appellate Court properly construed the "not in plain view" element of General Statutes § 53a-189a in affirming the judgment dismissing the charges against the defendant.

The summary appearing here is not intended to represent a comprehensive statement of the facts of the case, nor an exhaustive inventory of issues raised on appeal. This summary is prepared by the Staff Attorneys' Office for the convenience of the bar. It in no way indicates the Supreme Court's view of the factual or legal aspects of the appeal.

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